

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 3 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and sd/-
MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

COMMISSIONER OF WEALTH-TAX

Versus

SHASHANK INDULAL

Appearance:

MR.B.B.NAIK with MR MANISH R BHATT for Petitioner
MR RK PATEL AND MR.B.D.KARIA for Respondent.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 14/07/98

ORAL JUDGEMENT

The following question is referred for the opinion of this Court:-

"Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer

to apply the rules contained in Schedule III, holding the same to be retrospective in operation?"

The same question arose in Wealth Tax Reference No.8 Of 1992 and companion matters. It was worded in the following terms:-

"Whether the Appellate Tribunal is right in law and on facts in directing the Wealth-tax Officer to value the immovable properties in accordance with the new valuation rules which were brought on the statute book by the Direct Tax Laws (Amendment) Act, 1989 Schedule III with effect from 1.4.1989?"

The question was answered by this Court in affirmative, i.e. in favour of the assessee and against the revenue in COMMISSIONER OF WEALTH TAX v. RAJESHKUMAR R. GANDHI (INDIVIDUAL), 219 ITR, 408.

While deciding the question, this Court considered earlier decision in COMMISSIONER OF WEALTH TAX v. KASTURBHAI MAYABHAI, 164 ITR, 107. It was also observed that the decision was taken to the Supreme Court and in COMMISSIONER OF WEALTH TAX v. SHARVAN KUMAR SWARUP AND SONS, 210 ITR, 886, the view taken by this Court in KASTURBHAI MAYABHAI was affirmed. The Division Bench, therefore, in RAJESHKUMAR R. GANDHI (INDIVIDUAL), following the decision of this Court in KASTURBHAI MAYABHAI, as affirmed by the Supreme Court, answered the question in favour of assessee.

Following the above decisions, in our opinion, the question referred to us must also be decided in the affirmative. Though it is differently worded than the one referred to us in Wealth Tax Reference No.8 of 1992, the question sought to be agitated is the same. Hence the question is decided in the affirmative, i.e. in favour of assessee and against the revenue. Reference is accordingly disposed of. In the facts and circumstances, no order as to costs.

The following question is referred for the opinion of this Court:-

"Whether, the Appellate Tribunal is right in law

and on facts in directing the Assessing Officer to apply the rules contained in Schedule III, holding the same to be retrospective in operation?"

Almost a similar question arose in Wealth Tax Reference No.8 Of 1992 and companion matters. The said question was worded in the following terms:-

"Whether the Appellate Tribunal is right in law and on facts in directing the Weal-tax Officer to value the immovable properties in accordance with the new valuation rules which were brought on the statute book by the Direct Tax Laws (Amendment) Act,1989 Schedule III with effect from 1.4.1989?"

It was stated that the question was answered by this Court in affirmative, i.e. in favour of the assessee and against the revenue in COMMISSIONER OF WEALTH TAX v. RAJESHKUMAR R. GANDHI (INDIVIDUAL), 219 ITR, 408.

While deciding the question, this Court considered earlier decision in COMMISSIONER OF WEALTH TAX v. KASTURBHAI MAYABHAI, 164 ITR, 107. It was also observed that the decision was taken to the Supreme Court and in COMMISSIONER OF WEALTH TAX v. SHARVAN KUMAR SWARUP AND SONS, 210 ITR, 886, the view taken by this Court in KASTURBHAI MAYABHAI was affirmed. The Division, Bench, therefore, in RAJESHKUMAR R. GANDHI (INDIVIDUAL), following the decision of this Court in KATURBHAI MAYABHAI, as affirmed by the Supreme Court, answered the question in favour of assessee.

Following the above decisions, in our opinion, the question referred to must also be decided in the affirmative. Though it is differently worded than the one referred to us in Wealth Tax Reference No.8 of 1992, the question sought to be agitated is the same. Hence the question is decided in the affirmative, i.e. in favour of assessee and against the revenue. Reference is accordingly disposed of. In the facts and circumstances, no order as to costs.
